DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 02-0302
Indiana Gross Retail Tax
For the Tax Years 1998, 1999, and 2000

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ISSUE

I. Sales Tax Assessments.

Authority: IC 6-2.5-2-1; IC 6-2.5-2-1(b); IC 6-8.1-5-1(a); IC 6-8.1-5-1(b); 45 IAC 2.2-4-8; 45 IAC 2.2-4-8(a).

Taxpayer argues that the audit erred in assessing additional sales tax liability over and above the amount of sales tax that taxpayer had originally paid. Taxpayer maintains that the audit incorrectly assessed the additional taxes based on the amount of its gross yearly sales rather than on the retail transactions which actually occurred within Indiana.

STATEMENT OF FACTS

Taxpayer is a transient seller of various craft items. Taxpayer travels from venue to venue offering her goods to the public. In addition, taxpayer rents booth space located at a particular Indiana venue to other vendors. The Department of Revenue (Department) conducted an audit of taxpayer's business records. Based upon those records, the Department concluded that taxpayer had substantially underpaid sales tax. Accordingly, the Department assessed additional sales tax. Taxpayer challenged these assessments on the contention that the assessment was – in large part – based upon sales transactions concluded at out-of-state locations. In addition, taxpayer argued that she was not responsible for collecting sales tax on income received from renting the booth spaces to other vendors. Taxpayer submitted a protest, and an administrative hearing was conducted during which taxpayer further explained the basis for her protest. This Letter of Findings results.

DISCUSSION

Taxpayer paid sales tax to Indiana during 1998, 1999, and 2000. During 1998, taxpayer paid tax based on approximately $14,000 in Indiana sales; in 1999, taxpayer paid tax based upon approximately $6,000 in Indiana sales; in 2000, taxpayer paid sales tax based on approximately $14,000 in Indiana sales.

Finding that taxpayer had "grossly" underreported Indiana sales, the audit determined that taxpayer's records for those three years were "not reliable and [could not] be used to determine

her Indiana taxable sales." Based upon the available records, the audit concluded that taxpayer's taxable sales were between 10 to 30 times greater than the sales amounts originally reported. In addition, the audit determined that taxpayer should have been collecting sales tax on the transactions involving the rental of booth spaces.

Taxpayer maintains that the additional assessments are wholly incorrect on the ground that these assessments are based upon the gross receipts received in Indiana, Kentucky, Ohio, Michigan, Illinois, Tennessee, and Missouri. In addition, taxpayer argues that the receipts for the booth rental were not subject to sales tax because the booth spaces were rented for more than 30 days.

Pursuant to IC 6-2.5-2-1, a sales tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is otherwise applicable. The statute requires that, "The retail merchant shall collect the tax as agent for the state." IC 6-2.5-2-1(b). In addition, 45 IAC 2.2-4-8(a) imposes sales tax on income derived from the "renting or furnishing for periods of less than thirty (30) days any accommodation including booths [or] display spaces . . . ."

A. Indiana and Out-of-State Sales.

Taxpayer has provided information purporting to establish what portion of its annual receipts were acquired from "retail transactions made in Indiana" and what portion of those receipts were acquired from out-of-state transactions. Taxpayer provided a list of the in-state and out-of-state events she attended. Taxpayer provided a list of general ledger entries and a list of bank deposits.

However, taxpayer has provided no original source documents indicating what sales occurred at what locations; for example, taxpayer was unable to provide a cash register tape or individual sales receipts.

Much of the information provided by taxpayer is incomplete, conflicting, or apparently erroneous. For example, taxpayer represents that during 1998, taxpayer was selling goods at a specific five-day event which took place in Michigan. However, a copy of an "Agreement for Exposition Space," indicates that taxpayer was simultaneously selling goods at a nine-day event which took place in Indiana during the same period. The Indiana and Michigan events are approximately 300 miles apart. The obvious disparity seems irreconcilable. In addition, taxpayer's original 1999 records indicate approximately 20 occasions in which taxpayer rented booth space at Indiana locations which taxpayer failed to account for during the audit review.

Of course, taxpayer should not be assessed Indiana sales tax on those out-of-state transactions for which sales tax was paid to the foreign jurisdiction; if taxpayer paid Ohio sales tax on retail transactions which occurred in Ohio, Indiana has no business trying to collect Indiana sales tax on those same transactions. However, taxpayer has provided no information which would substantiate that she ever paid sales tax to another state. Instead, taxpayer frankly admits that she never paid sales tax to another state.

Taxpayer has demonstrated that a portion of her annual sales took place at out-of-state locations. What taxpayer has failed to do is provide any demonstrably reliable and accurate method of

differentiating between sales which took place in Indiana and those sales which took place at out-of-state locations. None of the information which taxpayer has provided is original to any specific transaction or location. Instead, the information consists of such secondary sources as general ledger entries or records of bank deposits. Even a cursory examination reveals that the information taxpayer has provided is incomplete, inaccurate, or contradictory. Faced with such circumstances, IC 6-8.1-5-1(a) provides that, "If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available." Because apparently *some* portion of the taxpayer's sales took place out-of-state, the proposed assessment cannot be said to be completely accurate. However, given that taxpayer never paid sales tax to another state, given the total absence of any original sales records, and given that the available records are problematic, the proposed 1998, 1999, and 2000 sales tax assessments were based upon the "best information available."

The audit report's original conclusions and the consequent assessments are presumed correct. IC 6-8.1-5-1(b) states in part that, "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid." Faced with the audit report's original conclusions, "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Taxpayer has failed to meet her burden of demonstrating that the proposed sales tax assessments were attributable to retail transactions which occurred entirely at out-of-state locations.

B. Lease Income.

Taxpayer rents booth spaces to other transient vendors during a 10-day Indiana tourist festival. Taxpayer does not own these spaces; she herself leases a block of vendor spaces from the actual owner and then subleases the spaces to the individual vendors. The audit determined that taxpayer should have been collecting sales tax on each lease transaction. Taxpayer disagrees arguing that the booth spaces were rented for one year and that the receipts were not subject to sales tax.

45 IAC 2.2-4-8 provides that, "For the purpose of the state gross retail tax and use tax: Every person engaged in the business of renting or furnishing for periods of less than thirty (30) days any accommodation, including booths, display spaces and banquet facilities . . . is a retail merchant making retail transactions in respect thereto and the gross income received shall constitute gross retail income from retail unitary transactions."

The receipt/application provided to each of the vendors clearly states that the "Contract will be for the duration of one year" and that the amount of rent charged is the "Yearly Rental Total." However, the parties' actual contract states that "Booth space is rented for the month of October but occupancy is between October 12-21st." There is apparently a discrepancy between the language of the receipt/applications and the terms of the contract.

Considering both the language of the contract itself and the practical reality governing these transactions, it is evident that taxpayer is providing space to vendors interested in selling goods to customers who are present during the 10-day tourist festival. There is nothing to indicate that

the individual vendors use or even have access to the booth spaces during the remainder of the year. To the contrary, the contract language specifically indicates that the vendors are permitted access to the booth spaces for 10 days out of the year. In addition, taxpayer's records indicate that the vendors are provided electrical and sanitary services only during the 10-day festival.

Taxpayer has provided numerous copies of vendor receipt/applications indicating that taxpayer is renting the booth spaces "for the duration of one year." However, there is nothing to indicate that taxpayer has the authority or the means of allowing individual lessors to occupy these spaces for one year. There is nothing to indicate that the parties ever intended the vendors to occupy these spaces for one year. Despite what is printed on the receipt/applications, the Department is not required to exalt the form of the transactions over the substance of these booth rental agreements. Under 45 IAC 2.2-4-8, taxpayer should have been collecting sales tax on each of these transactions.

FINDING

Taxpayer's protest is respectfully denied.

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